ANNALS

OF THE

AMERICAN ACADEMY

OF

POLITICAL AND SOCIAL SCIENCE.

OCTOBER, 1890.

THE BEGINNINGS OF THE CONNECTICUT TOWNS.

CONSIDERABLE interest has been awakened of late in the political status of the lower branch of the Connecticut legislature. In this branch is to be seen a representation of the towns rather than of the people, and the system is denominated just or unjust by the one political party or the other much in accordance with its practical value as an aid to party supremacy. The question, while argued on its merits by careful writers, has been made the subject of newspaper discussion of greater or less historical value. Because there have of necessity been employed in the examination of the causes of the present representative system arguments based on historical origins, and because the support for such has been drawn from second-hand sources rather than from a study of the first authorities, I wish to present in this paper a re-examination of the character of the settlements and their early constitutional growth.

There has been among nearly all writers on the subject a notable lack of detailed research into the facts of settlement. The general historians have contented themselves with brief outlines, statements of the simpler truths of the narrative, and have left untouched the more philosophical aspect of the whole question. This aspect has come into view with the rise of a new school of historians, who, feeling that history is something more than the descriptive annals of a State or a people, have seen in the development of Connecticut constitutional life the type and, in part, the model of the greater federative democracy of the United States. Of this philosophical theory, the late Professor Johnston was the exponent, and his volume on Connecticut has spread the fame of the little State more widely than ever. This book, and the books of those who have accepted his theory have become the authority for popular opinion on the subject, and for many of the arguments used in newspaper polemics. It is my purpose to examine this theory thus become widely current and to see upon what foundation it is based.

Briefly stated, the line of thought is as follows: Political discontent in the Massachusetts Bay Colony led to the withdrawal of three towns into the vacant territory of the Connecticut valley, where there would be found greater liberty for the exercise of political rights, as well as greater extent of pasture and meadow. This migration was not the work of individuals but of towns, that is, of corporate bodies, fully organized both ecclesiastically and politically. As pre-existent organizations these towns were the fountains of sovereignty, and as independent republics they voluntarily came together and established a constitutional government, retaining in their own hands the reins of power and possessing all rights not granted to the central authority. In this federation of independent towns is to be seen a prototype of the federal relation of the States to the United States. As the towns created the commonwealth, so the towns have always been to the common-

wealth as the commonwealth to the Union. It is further stated that the general court of Connecticut could lay claim to no powers not expressly granted, and in all cases of doubt the presumption was on the side of the town; that the definition of town powers in 1639 was not the creation of new town privileges, but (in a manner not unlike the adoption of the first ten amendments to the Constitution, in their character as a bill of rights) the recognition of existing town functions, already possessed and in actual operation; that this independence of the town has colored the whole later history of the commonwealth, and that this idea of a federal relation between the towns was kept alive until it could be made the fundamental law of all the commonwealths in 1787–1789, and could find its proof and expression in the peculiar character of the lower branch of the State legislature, which is not the popular branch, but which as standing for town equality gave the idea of equality of State representation as seen in the Senate of the United States.

It is the first part of this outline that I wish to examine, by tracing the history of the Connecticut towns until the granting of the charter of 1662. The question naturally divides itself into three parts: First, the character of the settlements and the condition of the three communities previous to the adoption of the constitution of 1639; second, the source, whether the towns or the people, of this constitution, and the extent to which the theory of reserved rights can be supported by that document; and, finally, the relation of the towns to the central government during the twenty-five years following.

In discussing the first question we must go to the beginning of migration from England, for Professor Johnston has elsewhere carried his theory back to that point. In the volume published since his death on "The United States, Its History and Constitution," I find the matter thus stated: "In New England local organization was quite different. A good example is the town of Dorchester. Organized

(March 20, 1630) in Plymouth, England, when its people were on the point of embarkation for America, it took the shape of a distinct town and church before they went on shipboard. Its civil and ecclesiastical organizations were complete before they landed in Massachusetts Bay and came under the jurisdiction of a chartered company. Its people governed themselves in all but a few points, in which the colony asserted superiority. As the colony's claims increased, the town's dissatisfaction increased. In 1635 the town migrated in a body, with its civil and ecclesiastical organizations still intact, into the vacant territory of Connecticut, and there became the town of Windsor."[1] This statement contains just enough apparent basis in fact to make the impression conveyed a thoroughly misleading one. To express the matter in its simplest terms, there is here a strange confusion of a "company" and a "town." It is no new fact that all New England was settled by compact collections of colonists, organized in companies or bodies (the terms are synonymous), which often migrated more than once before becoming permanently settled. But the company and the town were not, as such, identical. The company generally formed the nucleus of a future town or came in to swell the body of previous settlers. As a company, they may have formed a part, large or small, of a legal town. In the majority of cases they were the original proprietors; but when dissatisfaction arose, and the company again took up the burden of its migration, it ceased to be a town the moment it was *in transitu*, and it did not become a town until it had passed through the plantation stage, and, after process of accretion and consolidation of government, had received legal recognition as a town. The facts bear this out. The company which left Dorchester and Plymouth, England, did not have a complete civil and ecclesiastical organization.

[1] This theory of migrating towns has become very generally current. The above quotation puts the matter in a nutshell. See, further, Johnston, Connecticut, pp. 59, 61, 69; also, Judge Mellen Chamberlain's criticism in a paper on the New Historical School, read before the Massachusetts Historical Society.

It had named its two ministers as its ecclesiastical officers. The people had resolved to live together, but the company was under the jurisdiction of the chartered government from the day of its formation, and two of that government's magistrates went to America as part of the company. The latter was well equipped with unusually good men, but there was no civil organization—only the expectation that each man would perform the duties for which he was naturally fitted.[1] After the Dorchester company had settled down in the new Dorchester, all necessary matters were looked after by the clergymen and the two assistants. If this forms a town, then a town and a religious joint-stock company are very much alike. Massachusetts did not, however, consider this settlement a town, nor did the settlers consider themselves as such until after 1631, when a large number became freemen of the colony. Then for the first time, after reaching America, did the people come together in town meeting, elect their governing committee, the two clergymen and the two deacons, and vote on all local matters. With the continuance of this clergy government for a year, there follows a most interesting evolution of townsmen government through the meetings of the whole body, and the civil organization began for the first time to take on definite shape. But this does not concern us here, though it set the model for similar management in many of the Massachusetts towns. The next step was the migration to Connecticut. In his theory Professor Johnston here uses definite language: "Completely-organized towns," "Organic communities, not individuals, entered the territory," "An organized church meant an organized town," "The universal agreement in religion made town and church government but two sides of the same medal."[2]

If by the word town is meant the company, then the

[1] Roger Clap's Memoirs; Young's Chronicles, pp. 347-8; History of Dorchester, pp. 17-18.

[2] Johnston, Connecticut, p. 59; Fiske, Beginnings of New England, p. 126.

statements are nearer the truth. It is not difficult to find support for the confusion of the two terms in the contemporary authorities. The Massachusetts records and Winthrop, in his history, use the terms with the utmost looseness of meaning. The carelessness of Winthrop is evident from the fact that he speaks of "the three towns gone thither" before November, 1635, when neither of the organized churches had left Massachusetts.[1] The following are the facts about the migration: Not one-half of the people of Dorchester went to Connecticut; there was no reorganization of civil government, as would have been necessary had such been carried away to another territory; of the ten townsmen elected in 1634 only three went to Windsor; of the nine in 1635 only three; of the thirteen in June, 1636, only four. There are no indications in the records of the town of a removal, much less a reorganization. The assessment lists of Massachusetts contain the names of Dorchester, Newtown and Watertown after 1636, as they had done before. Certainly the theory cannot be here literally applied. But a company did migrate under the clergyman, Mr. Warham, just as a company which had left Braintree under Mr. Hooker left Newtown for Connecticut. If this was the migration of towns, then the same will hold true of migrations from Connecticut. Many companies equally well organized left the towns of the latter colony, impelled by similar religious dissatisfaction, to settle elsewhere. The most complete were the company which settled Stamford in 1641, under the Rev. Richard Denton, and the company which settled Hadley in 1659, under the Rev. John Russell. In the first case there was a definite number, a written compact, a vacant territory and an immediately established organization. In the second, a chosen minister, a large part of his flock, a recognized civil leader, a written compact, a vacant territory,

[1] Massachusetts Col. Records. I, 160. Winthrop's History, I, 136, 140, 170, 398. The Dorchester people were more accurate, "A meet place to receive our body [company] now upon removal." From a letter of the Dorchester company, quoted in Bradford, p. 340.

and an immediately established organization. The settlement of Norwich is even more noteworthy. The petition to remove came from the inhabitants of Saybrook, not from a company; the majority of town and church migrated with the minister, Mr. Fitch; the country was practically vacant and they at once laid out their town. In the first case, the body with the minister and many of the same individuals removed in three years to Long Island. Yet no one has ever thought of speaking of these as migrating towns, and Professor Johnston himself calls Stamford a plantation, which subsequently developed into a town.[1] If towns migrated from Massachusetts to Connecticut, then towns migrated from Connecticut to New Haven, and if we acknowledge the progression from company to plantation, from plantation to town, in the one case, so we must acknowledge it in the other.

We are now ready to take up the early history of Connecticut, to see whether in the initial stages of settlement we find organized towns entering a vacant valley and settling down as ready-made communities, or whether the presumption already raised against that theory will be confirmed. Explorations for trade had been made as early as 1633 by Oldham and Hall, who saw the ground and brought back good reports of it to their fellows at the Bay. In the same year a company of Plymouth people established themselves in a trading house at Windsor. The year 1633 marks, therefore, the period of traffic with the Indians. The next year the Wethersfield adventure lands were occupied by nine house builders and planters, increased to twenty-five or thirty by the middle of the following May. Thus the year 1634 marks the beginning of settled agricultural life, when the germ of a permanent community was planted. The first half of the next year saw the continuation of the agricultural stage, when Windsor received the first installment of people from Massachusetts Bay. Part of these were Dorchester emigrants

[1] Johnston, Connecticut, p. 88.

and part the company of Servants (Stiles' party) who came directly from England. The latter, acting under the direct authority of Saltonstall, one of the patentees, had instructions to impale under patent title two thousand acres of Windsor territory, but were prevented from doing so by Ludlow and the Dorchester company. Both of these bodies formed an integral part of the later community. During the same year, sometime in May or June, a few people had arrived at Hartford, occupying adventure lands there; and other settlers continuing to arrive almost daily during the next two months there were by November, 1635, in the neighborhood of 150 or 200 people in the Connecticut plantation. These people were engaged in apportioning lands and building houses, and in looking after certain matters of daily life necessary to their existence as traders and planters. Surely, this was not a vacant valley. The incipient republics were already formed, for there is evidence that the settlers living in three different places for a distance of thirteen miles along the river came together not as a whole, but each in its own locality, when necessity required to determine on certain simple matters regarding their lands and houses. Each formed in one sense of the word a self-governing republic, exercising that natural liberty necessary to their well being in a primeval wilderness. In each of these centres there was a latent independence, a town in embryo. But it was not a town organization which existed; latent independence had not become active, for we have nothing more than self-management by a body of proprietors who had no practical connection with a jurisdictional authority higher than themselves, although legally they still supposed themselves subject to the Massachusetts Bay Company.

From the above brief outline we notice two things: First, that a natural management of local affairs began before the so-called completely organized towns entered the territory; and, second, that whatever government we find the colonists exercising was unofficial, unorganized

and unsystematic. Such government was purely democratic, but it was not the government of an independent town.

Passing the beginnings of the agricultural stage, we reach that period when it was necessary to organize in military fashion against the Indians, to turn the agricultural settlements into armed camps and form the people into a body of trained soldiers. Coeval with this was the first recognition by Massachusetts of the Connecticut plantations, and in June, 1635, one constable was appointed who was one of the settlers themselves; and three months later permission was given for the loan of military stores and the election by each plantation of its own constable, who was, however, to be sworn in by a magistrate of Massachusetts Bay. An examination of the duties of the early Connecticut constable shows him to have been a military rather than a civil officer. The first organization of these towns was for defense. When, however, permission had been wrested from the Massachusetts court for the removal of the churches, and one of them had emigrated in the Spring of 1636, there was drawn up a commission granted "to several persons to govern the people at Connecticut." The opening words of this commission, which was accepted because the Connecticut people did not know but that they were legally a part of the Bay colony, give no evidence of migrating towns. "Whereas," so read the commission, "upon some reason and grounds there are to remove from this our commonwealth and body of the Massachusetts in America, divers of our loving friends, neighbors, freemen and members of Newtown, Dorchester, Watertown and other places, who are resolved to transplant themselves and their estates unto the river of Connecticut, there to reside and inhabit, and to that end divers are there already and divers others shortly to go, we . . think it meet that where there are a people to sit down and cohabit, there will follow some cause of difference as also divers misdemeanors . . so order that [eight Connecti-

cut men] or the greater part of them shall have full power and authority [to exercise jurisdiction for the] peaceable and quiet ordering the affairs of the said plantation." The commission mentions the towns, and recognizes the doubtful character of its own jurisdiction, in recommending, after a year, the convention of the inhabitants "to any convenient place that they shall think meet in a legal and open manner by way of court." At the time of the setting up of the provisional government only one church body had arrived; in the other "towns" there was no ecclesiastical organization whatever. Therefore, when in April, 1636, this government, ordained by Massachusetts, gave to the plantations their first legal recognition by the appointment of three constables, one for each group of proprietors (and there is no evidence that the people had any voice in the matter), these boasted republics received at the hands of a government, not of their own election and drawing its authority from an outside source, the first element of an official system. Massachusetts may have had no jurisdiction, but this government was afterward recognized as perfectly legal, for its acts were unrepealed by any later authority. By it the settlements were bounded and named, their power for self-support and defense against the Indians increased, and the church at Wethersfield was legally organized.

With the arrival of Mr. Hooker and Mr. Stone, in June, 1636, with the Newtown Church, the completed stage of ecclesiastical organization begins. But were town government and church government but two sides of the same medal? Certainly not in Wethersfield, for there but seven men constituted the legal church, while there must have been at this time over fifty men in the Wethersfield plantation. We may safely say the same of the other settlements, for the fact that civil privilege was not dependent on church membership made town organization independent of church organization. In practice they would coincide, for the town, in town meeting, did later control church

affairs, raised the rate, called the minister and built the meeting house, yet it does not follow that at this time in Connecticut those who composed the legal church organization would be allowed to manage secular matters. In respect of privilege the township was broader than the parish, and in theory the town contained more people than the parish. Were this not so, we might expect to find at once, on the setting up of organized churches, a definite expression of their influence, either acting as the vestry of an English parish, and themselves managing town affairs, or setting up a corresponding town government, which should be the counterpart of the church organization. Meagre though the evidence is, there is not the slightest indication that any change took place in the simple democratic self-management which these settlements, up to this time, had exercised. No records were kept, so far as I know, for there was no recorder, and in Hartford there are only four notes or memoranda covering the period to 1639. Hartford was more advanced in all the later recorded stages of development, and there is every reason to believe that it was, as the centre of the active political life of the colony, the first to establish a town organization.

Of course these migrating bodies might have elected a complete equipment of officers to control their movements on the march, but while it is plainly evident that they did not do so, it is also plainly evident that the forerunners in Connecticut would have accepted with little grace an organization in which they had had no voice. The addition of greater numbers, and the presence of active and leading men, undoubtedly quickened the democratic spirit in the colony, but there is no evidence of any immediate attempt at further organization. It is not likely that Mr. Hooker or Mr. Ludlow would be willing to establish in town government, any more than in state, a mere copy of the Massachusetts system, but would be content with the simple and effective meeting of the whole already in vogue. Civil government was to continue in a form easy of modification

until the period of experimentation had passed, and a definite government in town and state decided upon. Probably such government was that of temporarily appointed committees, as at Springfield for ten years. Beyond this there is no evidence of official organization, but a constable, a collector and a commissioner for each town were selected by the central authority.

There seems, therefore, no evidence warranting the view of migrating towns. These settlements, like other colonial centres, grew naturally during a period of six years before they attained their full dignity as towns.

In examining the question as to what is meant by the use of such terms as independent sovereignties, pre-existent and theoretically independent bodies, etc.,[1] we reach a problem of considerable complexity, perhaps too difficult for satisfactory discussion. It is evident that in such discussion we must accept the spirit as of equal value with the letter. The terms as used are too large; they mislead the casual reader. Understood in the loosest sense they may be applied to a body of planters in a primeval wilderness or on an isolated island. But union without organization or systematic corporate life cannot exemplify any principle of sovereignty. In the Austinian sense sovereignty must be determinate, must be habitually obeyed, must be free from the control of every other human superior. Here were three settlements united in the circle of colonial authority and included under one government. Each was, originally, potentially sovereign. Apart from their religious unity and close neighborhood, had there been no provisional government of 1636–7, no independent government of 1637–9, and no constitution of 1639, each of these settlements might have gone forward developing organized independence, crystalizing each into a sovereign town, one of which in a more monarchical and centralizing atmosphere, might, under favorable conditions,

[1] Johnston, Connecticut, p. 76; Fiske, op. cit., p. 128; Bronson, Early Government in Connecticut, p. 299; New Haven Hist. Soc. Publ., III.

have extended the power of its own government and absorbed the others; or, having reached a stage of definite independence, all might have federated together and have fulfilled the conditions claimed for the Connecticut towns. But in fact such a course would have been manifestly impossible. The three settlements looked upon themselves as one colony, as one people; only as such did they possess sovereignty in the sense of the word apparently intended by its advocates. There were not three sovereignties, but one sovereignty. The towns were hardly recognized as independent political entities; they had not come as organized towns; they had not in any time in their development established any town constitution (as at Springfield), or organized any form of local government other than the meeting together by tacit consent to take common action in the management of their agricultural and military affairs. Such common action is the purest form of democracy, but we cannot turn a body of planters loose in the wilderness, even though in their clearing and building, sowing and fighting, they act together, and call them a completely organized town. These separate settlements were more than bodies of squatters, but less than organized communities. No one can doubt that in each there was seen a prospective town. For this reason each would have resisted any interference or coercion which would have destroyed its existence as a separate community, or have been jealous of any disproportionate arrangement which would have lessened its share in the general government. Each settlement desired and received a just recognition in all matters which concerned the whole. Beyond this, which is certainly not an exercise of anything like sovereignty, I do not conceive it possible that they could have gone or ever thought of going. Sovereignty is a fact, not a law or a right, and in their simple management of local affairs, I conceive them to have been subordinated to the opinions and principles, tacitly understood, until more definitely formulated, which governed the

whole. This show of independence in the management of local affairs was due to the fact that in such management they never came into conflict with the whole body. It was a somewhat chaotic, experimental stage, when questions of settlement, defense and internal religious harmony were meeting with more attention than matters of civil government. The colonial records begin with 1636, and there is every reason to believe that no town acts were recorded before 1639.

But with the arrival of Mr. Hooker, plans of permanent government probably began to be formed for both town and colony. There was too much regard for the civil necessities of the new settlement for a matter of so much importance to be delayed longer. Yet two years and a half elapsed before such plans were carried out. With the opening of the year 1639 the people of Hartford came together and elected townsmen. The entry of this is the first formal town record in the colony. Of course, this does not prove a first election, yet there is much reason to suppose that it was so. Accompanying the record of election, there is a kind of town constitution in seven sections, in which the town reserves certain definite rights to itself. The exactness of these reservations shows previous thought and experimentation, probably by previously appointed committees. It is doubtful whether the other towns did the same at once; if so, their official growth was slower, for when their records begin, some years later, townsmen are the only officials, while Hartford by that time had a fairly complete organization. Two weeks after the establishment of organized town government appeared the famous constitution, which Dr. Bacon and all after him have recognized as "the first example in history of a written constitution—a distinct organic law, constituting a government and defining its powers." Hooker, Ludlow and the others thus carried their plans concerning a permanent form of government in town and State to completion at about the same time. As the people of Hartford

had come together and elected their townsmen, giving them all authority, with certain reservations, so on January 14th, 1639, all the people of the colony, or as many as could be present, met at Hartford and adopted the constitution which their leaders had framed.

This reference to the fundamental articles brings me to the second question proposed for examination, Whether the source of the constitution was the towns or the people, and how far the theory of reserved rights can be deduced from that document. On the first point we have seen that the constitution was adopted in a mass meeting of all the people; upon this all writers agree. We are to suppose that they left their towns behind them and came together as the people of a single colony to organize a common government; that they did not come as representing their towns. But if there were no town lines dividing this assembly outwardly, we may well suppose that they carried their towns in their hearts, as the document itself shows, for Trumbull says it was adopted after mature deliberation. The following are the clauses of the preamble, which refer to the source and objects of the constitution. . . "We the Inhabitants and Residents of Windsor, Hartford and Wethersfield are now cohabiting and dwelling in and upon the river of Connecticut and the lands thereunto adjoining, and well knowing where a people are gathered together, the word of God requires that to maintain the peace and union of such a people, there should be an orderly and decent government established according to God, to order and dispose of the affairs of the people at all seasons as occasion shall require; do therefore associate and conjoin ourselves to be one Public State or Commonwealth, and do for ourselves and our successors and such as shall be adjoined to us at any time hereafter, enter in combination and confederation together to preserve the purity of the Gospel, the discipline of the churches, and to be guided in civil affairs according to the orders laid down in the succeeding eleven articles."

I cannot find in these words any underlying conception of the towns as the sources of sovereignty. The constitution was the work of the people and for the people, and this natural interpretation is accepted by the majority of historical writers.[1] After a careful study of the constitution, there seems no reason for the inference that the framers or the mass meeting which adopted it had any thought of a distinction between town sovereignty and popular sovereignty, but that the equality of the river towns was a necessary consequence both of the conditions of settlement and of the harmony and support between neighbors and kinsmen, and that so far as the Connecticut founders thought about the matter at all, they sought, in view of the contempt shown by the Massachusetts Court of Assistants for popular rights, to preserve these rights to the people. There is a distinct feeling in interpreting both the spirit and letter of the constitution that there was a power over and above the towns, "unto which the said towns are to be bound," as the eighth section says. This power was not created for the first time when the constitution was adopted—this concentrated and legalized it—but it had existed, and was understood to have existed, during the whole period. This was the power of a sovereign people, and I do not believe that the people of each town felt themselves at any time free from this superior authority. But these towns were recognized not only as organic parts of the colony, but as the peculiar form, indestructible and unchangeable, in which the colonial structure had been cast. Therefore there is throughout the constitution a clear declaration of town autonomy.

Before the adoption of the constitution the towns had a certain amount of original right, an independence in local matters, which was operative so long as they did not come

[1] Except Doyle, Puritan Colonies, I, p. 159, and Fiske, Beginnings of New England, pp. 127-8. On the other hand see Trumbull, Hist. of Conn., I, p. 95; Sanford, Hist. of Conn., p. 32; Palfrey, Hist. of New England, I, p. 232; Deane, Narrative and Critical Hist. of America, III, p. 330; Tarbox, Memorial Hist. of Hartford County, I, p. 40; Johnston, Connecticut, p. 63.

into contact with the principles which governed the whole; but each had in it a representative of the central authority, and had the inhabitants of any of the towns refused to conform to these principles, or refused to join the others in establishing the new government, they would doubtless have been obliged to find a home elsewhere. After the adoption the towns became, by the law just created, convenient organs for shaping the machinery of the new government. This is seen in Sections 3, 5, 6, 7, 8, 9, 10, 11, where the towns, not the inhabitants of the towns, are expressly mentioned as channels for taxation, administration and representation. Yet when the original source is mentioned, or an original right maintained, the inhabitants (*i. e.*, the narrower circle of electors—the freemen) are, with evident intention, referred to; as, for example, in two cases to be later discussed—the election of magistrates and the proportioning of deputies for the new towns. This would seem to show a separation of the source of sovereignty from the machinery by which it was exercised.

It is a remarkable fact that while the framers sought to preserve those privileges, for the acquisition of which, among other causes, they had left Massachusetts, yet in this constitution the sovereign right of the people was given up, and the supreme power vested in the general court. In Section 10 occurs this clause: "In which general courts shall consist the supreme power of the commonwealth, and they only shall have power to make laws or repeal them, to grant levies, to admit of freemen, dispose of lands undisposed of to several towns or persons, and also shall have power to call either court or magistrate or any person whatsoever into question for any misdemeanor, and may for just cause displace, or deal otherwise according to the nature of the offense; and also, it may deal in any other matter that concerns the good of this commonwealth, except election of magistrates, which shall be done by the whole body of freemen." In this article there is but one reservation, the election of magistrates;

all else which concerned the good of the commonwealth was to be under the control of the general court, except as it might delegate certain powers to others. Yet in the presence of this clause, Professor Johnston says that the town was the residuary legatee of political power, and that it is the State which is called upon to make out a clear case for powers to which it lays claim; and Professor Fiske goes still further from the truth in saying that the constitution was the work of independent towns, and that all attributes of sovereignty not expressly granted to the general court remained as of original right in the towns.[1] It is not a mere coincidence that we find the same principle expressed in the fundamental law of both town and State, in which law the powers of the central authority cover all those not expressly reserved by the people, a principle the very reverse of that just quoted. In the single reservation already referred to, the freemen are the electors, and the admission of freemen was in the hands of the general court, who granted the privilege to all who had taken the oath of fidelity and lived within the jurisdiction. Yet the magistrates were not elected by all the people, for freemanship did not imply universal suffrage, as during the period we are discussing there were only about half as many freemen as rateable persons. I shall speak of this point again; it is here noted to show that the reservation clause had nothing to do with the towns or even with the people as a whole.

One naturally compares the phraseology of such a document with the language used in the Articles of Confedera-

[1] "In Connecticut the governing principle, due to the original constitution rather than to the policy of the commonwealth, has been that it is the State which is called upon to make out a clear case for powers to which it lays claim, and that the towns have a *primâ facie* case in their favor whenever a doubt arises." (Connecticut, p. 62). "No attempt was made to define the powers of the towns, for the reason that they being pre-existent and theoretically independent bodies, had all powers not granted to the commonwealth." (P. 75). Fiske says: "The Government of the United States is in lineal descent more nearly related to that of Connecticut than to that of any of the other thirteen colonies. The most noteworthy feature of the Connecticut republic was that it was a federation of independent towns, and that all attributes of sovereignty not expressly granted to the general court remained as of original right in the towns." (Pp. 127-8.)

tion, which is a carefully worded agreement between sovereign States, pre-existently independent. In this latter document there is scarcely a reference to the people; each State retains its sovereignty, freedom and independence, and reserves every power, jurisdiction and right which is not expressly delegated to the United States in Congress assembled. To such a confederation the words of Professor Fiske will apply. They find no basis in the fundamental articles of Connecticut, where all power is given to the governor, magistrates and deputies of the people in general court assembled. In that particular the Connecticut constitution is fundamentally different from the Constitution of the United States, which contains an enumeration of the powers expressly granted by the people to their government; and the Government of the United States can claim no powers which are not granted to it by the Constitution. Here is Professor Johnston's governing principle, wrongly declared to exist in the Connecticut constitution. It is worthy of note that the latter more nearly resembles the constitution of the Dominion of Canada.

The fundamental articles changed the practical subordination of the towns to the sovereign people into a legal subordination to a sovereign general court. This fact has been recognized by the Supreme Court of Connecticut in the most positive language. In 1864, that court expressed its opinion through its Chief Justice as follows: "That extraordinary instrument purports on its face to be the work of the people—the residents and inhabitants of the three towns. It recognizes the towns as existing municipalities but not as corporate or independent, and makes no reservation expressly or impliedly in their favor."[1] This I conceive to be the only warranted view of the case.

We are now prepared to pass to the third stage of our investigation—to the examination of two questions. Were the towns actually as well as legally subordinate to the

[1] 32 Connecticut Reports, p. 137.

general court during the period preceding the charter? And was the present theory of town representation in the lower branch of the State legislature intentionally introduced or thought of by the founders of the commonwealth?

The discussion of the first question may be brief. In August or September, 1639, the court appointed a committee to complete and systematize the town organization. Their work was finished by October, and the schedule of powers thus delegated to the towns was adopted by the court at that time. It is not necessary to fully outline these powers here; they were added to from time to time, and constituted all the rights of which the towns were possessed. To suppose that the towns were sufficiently organized to be already exercising all the privileges contained in these orders is only an inference from the erroneous theory of completely organized towns migrating from Massachusetts. That they were already selling their lands, appointing their own committees for the management of local affairs and making assessments, as would any body of proprietors, I do not doubt, but that they had a regular system of taxation, of distraining for non-payment, of dispensing justice, of recording titles, bonds, sales and mortgages, or of managing probate business, is not warranted by any records whatever. Power ran in Connecticut, as in other states, from the commonwealth downward. The towns never failed to realize this fact. Had they possessed reserved rights, it is not unreasonable to think that they would have made use of this privilege during the years following. If they had already exercised all the powers contained in the October orders, we should expect to find them not only continuing their complete exercise, but at times going beyond them, and drawing on their inherent rights; or at least objecting to undoubted encroachments of the central authority, as did the States under the Articles of Confederation. There is not only no indication of such an attempt, but there is distinct evidence to the contrary. A careful study of the town and

colony records gives me confidence in saying that in not a single instance did the towns pass the bounds defined by the court orders. The allowance was liberal, and in some cases the towns did not wholly exhaust the powers granted them. They recognized their subordination to the general court and expressly say so. Windsor, in 1659, speaking of certain local difficulties, recognized the court as "having left the care and ordering of things of this nature to the care of the townsmen of the several towns;" and Hartford, some years later, uses this phrase: "If the general court see cause to overrule in this case, we must submit." The court not unfrequently overruled, and it did not hesitate to interfere directly, though from a sound policy it rarely did so. At first its tone toward both individuals and towns was rather recommendatory than authoritative, yet it "ordered" often enough to show that it felt quite sure of its right to do so. Of the many migrations from the Connecticut colony, not one was owing to the exercise of the powers which the general court claimed for itself. The latter had entire charge of the military and commercial affairs of the colony, and in the former of these, from the first, its tone was one of command. In general, one may say that the colony kept a strict but not a jealous eye upon the local welfare of its towns, while in these subordinate republics the subordination was less irksome and the republicanism more active than was the case in its sister colony, Massachusetts.

I have little space left for a discussion of the last question laid down for examination, and can do little more than indicate the theory and practice of representation under the constitution and the charter. We are told that the system of town representation, as seen at present in the lower branch of the Connecticut legislature, has been existent from the first, and that it was the pre-existent independence of the original towns which established the basis of the present system. If what has been said against such a pre-existent sovereignty be true, we may hope to find

support for the view of popular rather than municipal sovereignty somewhere expressed. Throughout the constitution there is a clear attempt to extend the power of the freemen and curtail that of the magistracy. The theory even has been advanced that it was not at first intended to give the magistrates a seat in the general court.[1] However that may be, the predominance given to the deputies is patent, and it is pertinent to our subject to know whether these deputies represented at this time the towns as equal entities, or the body of freemen as a whole. For democracy, according to the theory of the Connecticut fathers, meant the privileges not of all the people, but of the freemen, by whom magistrates and deputies were elected, but the only qualifications were residence and an oath of allegiance, although the latter was tinged with a Calvinistic fearfulness. Thus in theory, freemen and inhabitants were separated only by an oath; in practice, not half availed themselves of the privilege. We can hardly say, however, that the magistrates were the representatives of the freemen; the reservation of this peculiar privilege was rather to prevent the setting up of a government of Assistants, with which they had been dissatisfied in Massachusetts, than for the purpose of representation. How was it, then, with the deputies? In Section 8 we read: "It is ordered, sentenced and decreed that Windsor, Hartford and Wethersfield shall have power each town to send four of their freemen as their deputies to every general court, and whatever towns shall be hereafter added to this jurisdiction shall send so many deputies as the court shall judge meet, a reasonable proportion to the number of freemen that are in the said towns being to be attended therein." Two conclusions seem to me clear from this clause: First, that the court was to keep in its own hands the determining the number of deputies that each new town was to send, and that, therefore, such town was not necessarily to have an equal representation with every other town; and, second,

[1] Bronson, Early Government in Connecticut, pp. 318–19.

that the number so determined on by the court was to be regulated by the number of freemen in each town. Thus, the deputies, not forming a lower house till 1698, were considered the representatives of the freemen of the colony and delegates of the towns where they dwelt. This is the principle applied to-day in the House of Representatives and in the lower branches of the other State legislatures. Appended is a table of the actual representation from 1636 to 1663. As a statistical table it is probably faulty; the colonial secretaries were certainly careless at times, though the general accuracy of the figures can be relied on.

It will be at once seen that no town, except the river towns, has ever sent more than two deputies; each seems to have been allowed to send one or two at its pleasure.[1] This practical working of the system found expression in the charter, where is to be seen the first indication, since become the rule, of an equality of towns. The charter says: "The assistants and freemen of the said company, or such of them (not exceeding two persons from every place, town or city), who shall be from time to time thereunto elected or deputed by the major part of the freemen of the respective towns, cities or places for which they shall be so elected . . . . . shall have a general assembly." Of the principle here laid down there can be no misinterpretation, for the use of the terms town and city shows that an inequality in size of the towns was anticipated. We must therefore look to the history of the colony after 1639, as well as before, to the policy and practice of the commonwealth government rather than to any intention of its founders for the causes of such a limitation. Among these causes may be named the original equality of the river towns, the scattered situation of the later towns, the greater convenience in the size of the legislature, the liberal policy which caused the towns to be practically more or less independent of the central authority, and finally a growing feeling that the workings of so pure

[1] Conn. Col. Rec., I, p. 36.

	1636.	1637.	1638.	1639.	1640.	1641.	1642.	1643.	1644.	1645.	1646.	1647.	1648.	1649.	1650.	1651.	1652.	1653.	1654.	1655.	1656.	1657.	1658.	1659.	1660.	1661.	1662.	1663.
Hartford	3	4	4	4	4	4	4	4	4	3	4	4	4	4	4	4	5	4	4	4	4	1	4	4	4	3	2	2
Windsor	3	4	4	4	4	4	4	4	4	3	4	4	4	4	4	4	4	4	4	4	4	2	4	4	4	4	2	2
Wethersfield	3	4	4	4	4	4	4	4	4	3	4	4	4	4	4	4	4	4	4	4	4	3	4	4	4	4	2	2
Stratford							1				1	2	1	2	2	2	2	1		2	2	1	2	2	2	2	2	2
Fairfield								1			2	2	2	2	1	1	2	2		2	2		2	2	2	2	2	2
Farmington												2	2	2	2	2		1		2	2	1	2	2	2	2	2	2
Saybrook														2	2	2	2	2		2	1		2	2	2	1	2	2
New London																2	2	2		2	2	2	2	2	1	2	2	2
Middletown																		1	1	2	2		2	2	2	2	2	2
Norwalk																		1		2	1	1	2	1	1	2	2	2
Norwich																											2	2

a democratic government had not been successful.[1] These may explain why in the court which listened to the first reading of the charter there sat but two deputies each from the river towns, whereas in the court of the year before there sat four; and why each town and city, without regard to population, was to have no more than two representatives. At all events, the cause of the present system is a composite one, not due wholly to the historical origins nor explicable on the simple basis of greater convenience.

It has been my object in this paper to do no more than modify the theory which Professor Johnston has so ably developed, and to bring it into better accord with the facts. The fundamental idea—the migrating town—which has no existence either in fact or law, has colored, and in part vitiated, the first stages of the theory, and has led to the exaggerated statement of town organization and to the erroneous theory of reserved rights. To one who has sought to enter into the life of these people, to put himself into their place, looking at events as they looked at them, it is the very completeness of the likeness to the larger federal relation which creates suspicion. On *à priori* grounds it is improbable that so exact a parallel could be found in the beginnings of colonial history; that five-year-old settlements could have attained anything approximating the self-sustaining power and independence which, after 150 years of separate growth, influenced the colonies in their attempts at union, and which found expression in the form which such union took. But apart from that, there is a certain amount of truth in the parallel. It is an open question how many of the planters besides Hooker, Haynes, Ludlow and a few others discussed the form of government

[1] Note as evidences of this, 1. The increasing powers given to the magistracy by lessening the number necessary to be present at general court; power of magistrates over damages given in jury verdict (Conn. Rec., I, 138); magistrates to give the oath of fidelity and make freemen (p. 139); three magistrates may compose a particular court (p. 150); in the absence of governor and deputy governor the magistrates may call a general court (p. 256); note also pp. 277, 283 and 293. 2. The imposition of a property qualification for freemanship in 1657, and 3. The limitation of the number of deputies, thus decreasing the number of popular representatives in the general court.

they were creating, or how clear a conception any one had of a federation. Yet, consciously or unconsciously, this government had the form of a federation of three communities, whose integrity was preserved in the newly-formed constitution. The equality of representation had, however, no organic connection with this union of towns; it was an after-result, and shows, in part, at least, a mild reaction against the extraordinarily pure democracy first ordained. The question of town sovereignty previous to 1639 cannot be argued with complete satisfaction because of the lack of evidence, and merely inferential reasoning cannot be conclusive. To my mind, what evidence there is supports rather the argument against pre-existent sovereignty than the argument in its favor. Such a conclusion tends to heighten the prestige of Connecticut as the birthplace of American democracy. The idea of conscious town independence, of reserved rights, of towns as the sources of sovereignty, could not have been, in that formative period, other than an artificial production. I believe that the Connecticut constitution was a growth, as much as the Federal Constitution, and that its roots run far back into the history of England as well as Massachusetts Bay. Mr. Hooker had a clear conception of what a democratic government ought to be. He believed that the foundation of authority lay in the free consent of the people. Therefore it was Connecticut that first put into practice, under the guidance of his political genius, supported by the liberality of Haynes and the legal knowledge of Ludlow, this theory, which is the theory on which all government in the United States is constructed, that sovereignty is in the people. This fact Professor Johnston has fully recognized, but has, as it seems to me, unfortunately diverted our attention from that for which Connecticut is more justly celebrated by his peculiar conception of the position occupied by the towns. The experience of the colony with its towns had not been in any way comparable to the experience of the Federal Union with sovereign States. Therefore

the Connecticut founders acted on the broader principle at once, and town sovereignty, if such as a fact existed, was treated with scant courtesy in the formulating of the fundamental law. As Connecticut was the first organized government to draft for itself an organic law, so it was the first to build that law upon the theory—which, to Americans, is the only true theory—that the sovereignty of a state is in the people of that state.

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